

**REMARKS/ARGUMENTS**

Claims 20-155 remain pending in the patent application.

This response is also being submitted with a Supplemental Information Disclosure and an accompanying fee for submitting the same after the first Office Action.

**I. THE DRAWING OBJECTIONS**

In paragraphs 6-9 of the Office Action, the drawing is objected as failing to comply with Rule 84.

The drawing and/or the specification have been amended in view of the points raised in paragraphs 6-9.

In view of these amendments, reconsideration and withdrawal of the drawing objection is respectfully requested.

**II. THE SPECIFICATION**

In paragraph 10 of the Office Action, the specification is objected to for a number of informalities.

The specification has been amended in view of the points raised by the Examiner in paragraph 10. It is respectfully submitted that Mr. DePardo is trying to get information about the Needels reference cited on page 16 and will provide the same to the Examiner as soon as he receives the same from his associate.

In view of these amendments, reconsideration and withdrawal of the objection to the specification is respectfully requested.

**III. THE CLAIM OBJECTION**

In paragraph 11 of the Office Action, dependent claim 31 is objected to as being in improper form.

Claim 31 is amended to depend from independent claim 21, which contains a proper antecedent basis for all the elements recited therein.

For these reasons, it is respectfully requested that the objection to claim 31 be reconsidered and withdrawn.

#### IV. THE DOUBLE PATENTING REJECTIONS

##### A. The Statutory Double Patenting Rejection

In paragraphs 12 and 14 of the Office Action, the pending claims are rejected based on a statutory double patenting rejection in view of the claims in copending application no. 10/645,686 (CV-0039).

It is respectfully submitted that copending application no. 10/645,686 is a companion case to the instant application that will be allowed to lapse into abandonment. An Office Action was recently mailed for the copending application no. 10/645,686 and at this time no response is intended to be filed.

For this reasons, it is respectfully requested that the statutory double patenting rejection be reconsidered and withdrawn.

##### B. The Judicially Created Double Patenting Rejection

In paragraphs 13, 15 and 16, the pending claims are rejected based on a judicially created double patenting rejection in view of the claims in copending application nos. 10/661,254 (CV-0043) and 10/661,082 (CV-0040).

It is respectfully submitted that upon the issuance of a Notice of Allowance and payment of the issue fee, a terminal disclaimer will be filed to overcome these rejections.

For this reasons, it is respectfully requested that the judicially created double patenting rejection be reconsidered and withdrawn.

#### V. THE ANTICIPATION REJECTIONS

##### A. GROT ET AL.

In paragraph 18 of the Office Action, claims 20-23, 31, 44-45, 47, 49, 51-52, 54-55, 96-99, 104, 107, 109, 111, 113 are rejected as being anticipated by Grot et al.

The main independent claims 20 and 96 are amended to make clear that the optical identification element and/or method for reading the same includes the grating being embedded within a substantially single material of the substrate, consistent with that discussed in the aforementioned phone with the Examiner. In view of this, these claims are deemed to be in condition for allowance.

The remaining claims 21-23, 31, 44-45, 47, 49, 51-52, 54-55, 97-99, 104, 107, 109, 111, 113 depend directly or indirectly from independent claims 20 or 96, contain all the limitations thereof, and are deemed patentable over Grot et al. for all the reasons discussed above.

#### B. FRANKEL

In paragraph 18 of the Office Action, claims 20-27, 29, 31-33, 35, 37-41, 43-65, 67, 69-71, 73, 75-79, 81-102, 104-122, 124-142 and 144-155 are also rejected as being anticipated by Frankel.

In addition to that discussed above, the main independent claims 20, 58, 96, 116 and 136 are also amended to make clear that either the optical identification element or encoded particle, or method for reading the same, or method for performing a multiplexed particular assay using the same, includes not only the grating being embedded within a substantially single material of the substrate, but also the grating providing an output signal indicative of a code when illuminated by an incident light, wherein the code identifies at least one of the element or particle and a chemical, and the output signal is not a result of laser action with the grating when illuminated by the incident beam, consistent with that discussed in the aforementioned phone with the Examiner. In view of this, these claims are deemed to be in condition for allowance.

The remaining claims 21-27, 29, 31-33, 35, 37-41, 43-57, 59-65, 67, 69-71, 73, 75-79, 81-95, 97-102, 104-115, 117-122, 124-135, 137-142 and 144-155 depend directly or indirectly from claims 20, 58, 96, 116, 136 contain all the limitations thereof, and are deemed patentable over Frankel et al. for all the reasons discussed above.

#### VI. THE REMAINING OBVIOUSNESS REJECTIONS

In paragraphs 20-21 of the Office Action, the remaining claims 28, 30, 34, 36, 66, 68, 72, 74, 80, 103, 123 and 143 are rejected as being obvious over Frankel alone or in combination with Yguerabide et al. However, it is respectfully submitted that these claims depend directly or indirectly from claims 20, 58, 96, 116, 136 contain all the limitations thereof, and are deemed patentable over Frankel et al. for all the reasons discussed above.

VII. CONCLUSION

Reconsideration and early allowance of the claims is earnestly solicited.

If the Examiner has any questions regarding this Response, Applicant's counsel can be reached at 203-626-3331 (direct dial) between the hours of 8:00 a.m. and 6:00 p.m. or by E-mail at [gdeparo@cyvera.com](mailto:gdeparo@cyvera.com), or the undersigned attorney may be contacted at (203) 261-1234.

Respectfully submitted,



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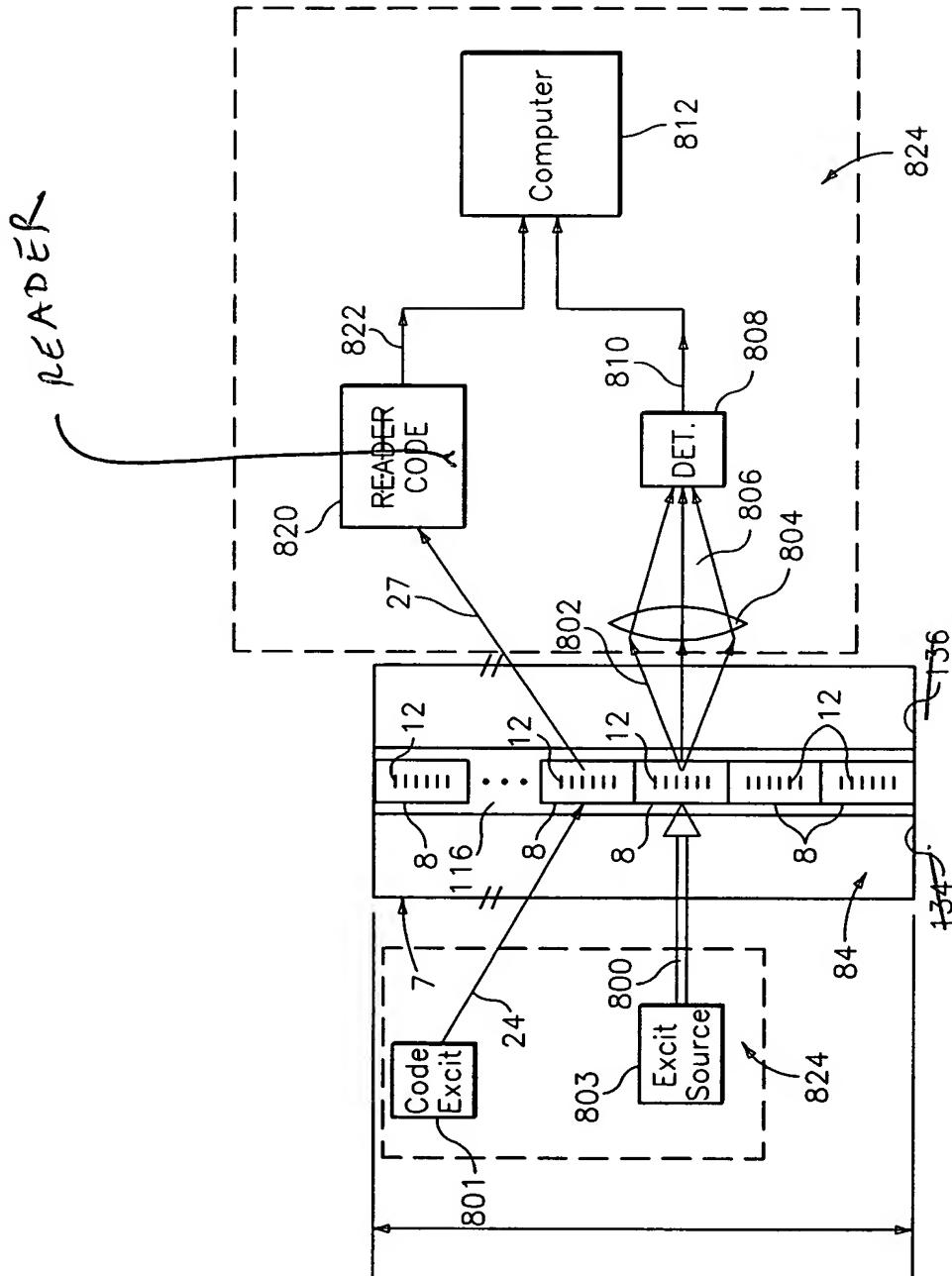


FIG. 9

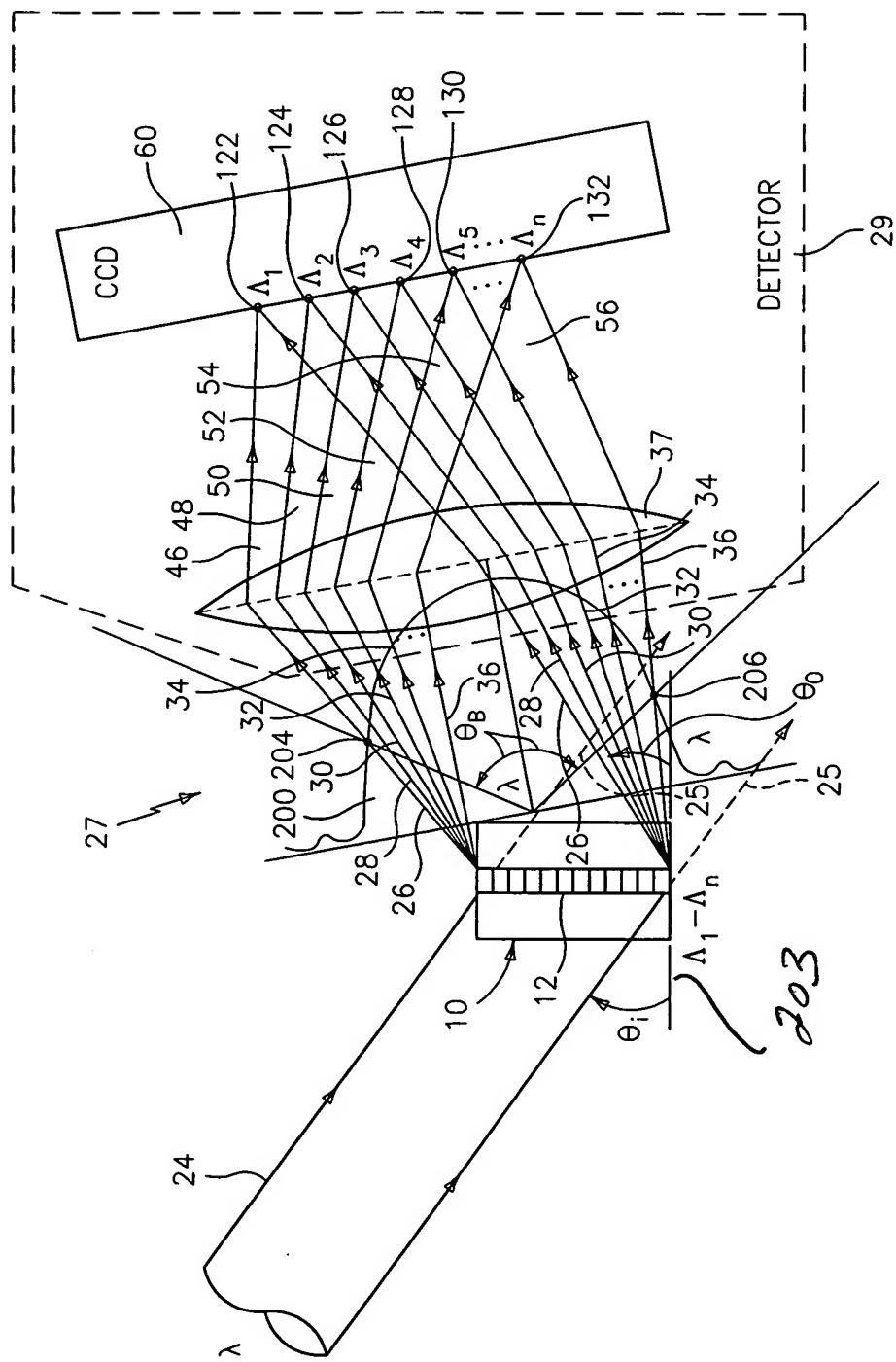
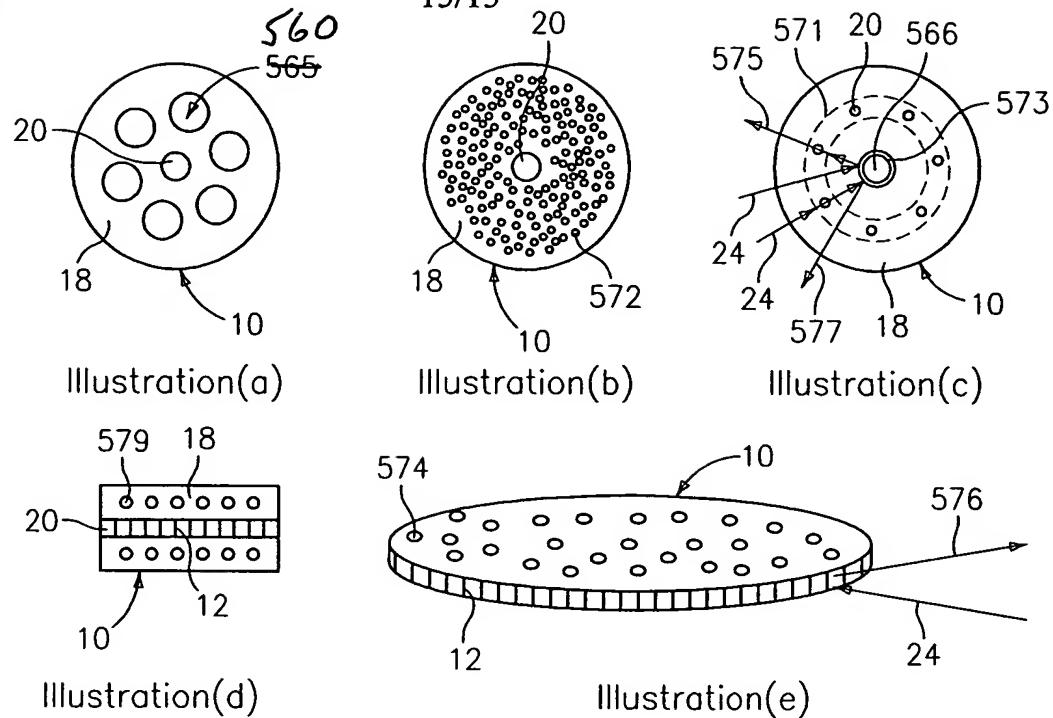
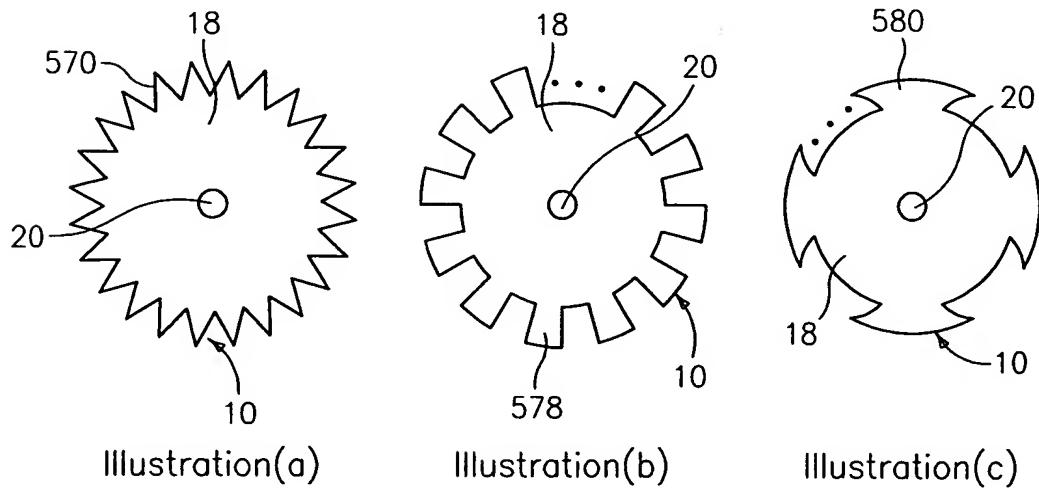


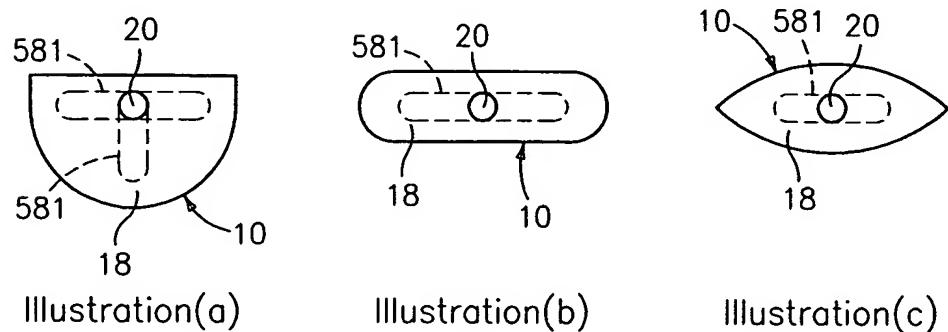
FIG. 10



**FIG. 33**



**FIG. 34**



**FIG. 35**